

IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:	)	
	)	
JMJ LAND, LLC,	)	
	)	CASE NO. BK11-40267-TLS
Debtor(s).	)	
DUANE JACOBS; CAROLYN SUE JACOBS;	)	A11-4068-TLS
JMJ LAND, LLC; LARUE K. MARSHALL;	)	
and HAROLD DEAN MARSHALL,	)	8:11CV106
	)	
Plaintiff(s),	)	CH. 12
	)	
vs.	)	
	)	
PT HOLDINGS, INC.; GEORGE	)	
MCFADDEN; LARRY A. BAKER;	)	
FEDERAL DEPOSIT INSURANCE	)	
CORPORATION as receiver for SHERMAN	)	
COUNTY BANK; LAWRENCE J. VOLF,	)	
	)	
Defendant(s).	)	

REPORT & RECOMMENDATION

This matter is before the court on the status reports submitted by the parties (Fil. Nos. 5, 6, 7, and 8).

The lawsuit concerns issues of allegedly unauthorized commodity trades conducted using funds withdrawn, allegedly without authorization, from the Sherman County Bank account of Duane and Carolyn Sue Jacobs. The FDIC, as receiver for the bank, began foreclosure proceedings against real estate held by MJM Land, LLC, which prompted the bankruptcy filing and the subsequent referral of the civil case to this court. The amount of the FDIC's claim is also an issue in the bankruptcy case.

The bulk of the causes of action alleged in the civil complaint involve non-debtor parties and non-bankruptcy law. The withdrawal provisions of 28 U.S.C. § 157(d) requires that a matter be withdrawn by the district court when “resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.” It also allows permissive withdrawal for “cause shown.” Resolution of the causes of action and affirmative defenses at issue in this case will require “substantial and material consideration” of law other than the Bankruptcy Code. *Wittes v. Interco Inc.*, 137 B.R. 328, 329 (E.D. Mo. 1992) (quoting *In re White Motor Corp.*, 42 B.R. 693, 705 (D. Ohio 1984)). *See also Rick Lange v. FDIC (In re TierOne Corp.)*, Adv. Proc. No. A11-4018-TLS, Fil. No. 30 (Bankr. D. Neb. May 27, 2011) (where consideration of FIRREA was necessary to determine the outcome of the lawsuit, mandatory withdrawal was appropriate).

Therefore, I respectfully recommend to the United States District Court for the District of Nebraska that it withdraw the reference of this matter for all further proceedings.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules.

DATED: July 25, 2011.

RESPECTFULLY SUBMITTED,

/s/ Thomas L. Saladino  
Chief Judge

Notice given by the Court to:

Brian J. Koenig  
Donald L. Swanson  
Brian S. Koerwitz  
Bruce A. Smith  
George McFadden  
James J. Frost  
James J. Niemeier  
Michael T. Eversden  
Lawrence J. Volf  
U.S. Trustee